

ORIGINAL

FILED
U.S. DISTRICT COURT
AUGUSTA DIV.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA

2015 APR 20 PM 4:39

DUBLIN DIVISION

CLERK DEH
SO. DIST. OF GA.

JOHNNIE SHAFFER, JR.,

Plaintiff,

v.

CV 314-070

LT. KYLE MADDOX, CO I, and,
JOHN CREAMER, E-2 Floor Officer, CO I,

Defendants.

ORDER


After a careful, *de novo* review of the file, the Court concurs with the Magistrate Judge's Report and Recommendation, to which objections have been filed (doc. no. 37). The Magistrate Judge recommended dismissing Plaintiff's deliberate indifference claim and allowing to continue only the excessive force claims against both Defendants. (See doc. no. 35.) The Magistrate Judge found Plaintiff did not exhaust his administrative remedies as to the deliberate indifference claim because the grievance dated March 15, 2014 does not mention or complain about the alleged denial of medical treatment after the use of force. (Id. at 7.) In his objections, Plaintiff complains that Georgia Department of Corrections' Standard Operating Procedure ("SOP") IIB05-0001 prohibits filing a grievance dealing with more than one issue, and therefore the grievance procedure was not available to him to exhaust a use of force and deliberate indifference claim. (See doc. no. 37.)

Plaintiff's objections ignore that Defendants produced documentation of Plaintiff's grievance history showing that he had no other grievance pending at the time he filed the

grievance concerning the events of March 15, 2014. (Doc. no. 35, p. 7 (citing Clemons Aff., Ex. 3, p. 1).) Thus, he could have filed one grievance for the use of force and one grievance for the denial of medical treatment and not run afoul of the rule allowing only two active grievances. See SOP IIB05-0001 § VI(B)(5). Plaintiff also fails to show that he actually tried to file a grievance addressing the alleged denial of medical treatment.

Accordingly, the Court **OVERRULES** Plaintiff's objections and **ADOPTS** the Report and Recommendation of the Magistrate Judge as its opinion. The Court **GRANTS** Defendants' motion to dismiss (doc. no. 27) and **DISMISSES** the deliberate indifference claim, as well as the official capacity claims for monetary relief and all injunctive relief claims. This case shall continue against Defendants Maddox and Creamer only as to the individual capacity Eighth Amendment claim for monetary damages based on the alleged use of excessive force. Within seven days of the date of this Order, Defendants must file an answer to this remaining claim, and the stay of discovery entered in ~~this case on~~ January 22, 2015, (doc. no. 31), shall be lifted.

SO ORDERED this 20th day of April, 2015, at Augusta, Georgia.


UNITED STATES DISTRICT JUDGE